

AMENDED IN ASSEMBLY APRIL 26, 2007

AMENDED IN ASSEMBLY APRIL 9, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 216

Introduced by Assembly Member Bass
(Coauthor: Senator Steinberg)

January 25, 2007

An act to amend ~~Sections 56366.1 and~~ *Section 56366.10* of the Education Code, relating to special education.

LEGISLATIVE COUNSEL'S DIGEST

AB 216, as amended, Bass. Special education: nonpublic, nonsectarian ~~schools and agencies~~; *schools*.

Existing law requires school districts, county offices of education, and special education local plan areas to comply with state laws that conform to the federal Individuals with Disabilities Education Act, in order that the state may qualify for federal funds available for the education of individuals with exceptional needs. Existing state law requires school districts, county offices of education, and special education local plan areas to identify, locate, and assess individuals with exceptional needs and to provide those pupils with a free appropriate public education in the least restrictive environment, with special education and related services as reflected in an individualized education program. Under certain circumstances, a school district, county office of education, or special education local plan area is authorized to enter into a contract for the provision of special education and related services with a nonpublic, nonsectarian school or agency that has been certified by the Superintendent of Public Instruction.

~~Existing law requires the Superintendent to annually review the certification of each nonpublic, nonsectarian school and agency, and, for this purpose, requires a certified school or agency to annually update its application between August 1 and October 31, unless the State Board of Education grants a waiver.~~

~~This bill would extend the timeframe in which to annually update the application, to between July 1 and October 31.~~

Under existing law, a nonpublic, nonsectarian school that provides special education and related services to an individual with exceptional needs is required to certify in writing to the Superintendent that it meets specified requirements, including, among others, that pupils have access to the specified educational materials, services, and programs to the extent available at the local educational agency in which the nonpublic school is located. *One of the specified educational materials relates to standards-based, core curriculum and instructional materials.*

This bill, instead, would require that the educational materials, services, and programs provided by the nonpublic, nonsectarian school ~~be adopted by the State Board of Education,~~ and be consistent with the pupil's individualized education program. *The bill also would revise the provision relating to standards-based, core curriculum and instructional materials.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 56366.1 of the Education Code is~~
- 2 ~~amended to read:~~
- 3 ~~56366.1. (a) A nonpublic, nonsectarian school or agency that~~
- 4 ~~seeks certification shall file an application with the Superintendent~~
- 5 ~~on forms provided by the department and include the following~~
- 6 ~~information on the application:~~
- 7 ~~(1) A description of the special education and designated~~
- 8 ~~instruction and services provided to individuals with exceptional~~
- 9 ~~needs if the application is for nonpublic, nonsectarian school~~
- 10 ~~certification.~~
- 11 ~~(2) A description of the designated instruction and services~~
- 12 ~~provided to individuals with exceptional needs if the application~~
- 13 ~~is for nonpublic, nonsectarian agency certification.~~

1 ~~(3) A list of appropriately qualified staff, a description of the~~
2 ~~credential, license, or registration that qualifies each staff member~~
3 ~~rendering special education or designated instruction and services~~
4 ~~to do so, and copies of their credentials, licenses, or certificates of~~
5 ~~registration with the appropriate state or national organization that~~
6 ~~has established standards for the service rendered.~~

7 ~~(4) An annual operating budget.~~

8 ~~(5) Affidavits and assurances necessary to comply with all~~
9 ~~applicable federal, state, and local laws and regulations that include~~
10 ~~criminal record summaries required of all nonpublic school or~~
11 ~~agency personnel having contact with minor children under Section~~
12 ~~44237.~~

13 ~~(b) (1) The applicant shall provide the special education local~~
14 ~~plan area in which the applicant is located with the written~~
15 ~~notification of its intent to seek certification or renewal of its~~
16 ~~certification. The applicant shall submit on a form, developed by~~
17 ~~the department, a signed verification by local educational agency~~
18 ~~representatives that they have been notified of the intent to certify~~
19 ~~or renew certification. The verification shall include a statement~~
20 ~~that representatives of the local educational agency for the area in~~
21 ~~which the applicant is located have had the opportunity to review~~
22 ~~the application at least 60 calendar days prior to submission of an~~
23 ~~initial application to the Superintendent, or at least 30 calendar~~
24 ~~days prior to submission of a renewal application to the~~
25 ~~Superintendent. The signed verification shall provide assurances~~
26 ~~that local educational agency representatives have had the~~
27 ~~opportunity to provide input on all required components of the~~
28 ~~application.~~

29 ~~(2) If the applicant has not received a response from the local~~
30 ~~educational agency 60 calendar days from the date of the return~~
31 ~~receipt for initial applications or 30 calendar days from the date~~
32 ~~of the return receipt for renewal applications, the applicant may~~
33 ~~file the application with the Superintendent. A copy of the return~~
34 ~~receipt shall be included with the application as verification of~~
35 ~~notification efforts to the local educational agency.~~

36 ~~(3) The department shall mail renewal application materials to~~
37 ~~certified nonpublic, nonsectarian schools and agencies at least 120~~
38 ~~days prior to the date their current certification expires.~~

39 ~~(c) If the applicant operates a facility or program on more than~~
40 ~~one site, each site shall be certified.~~

1 ~~(d) If the applicant is part of a larger program or facility on the~~
2 ~~same site, the Superintendent shall consider the effect of the total~~
3 ~~program on the applicant. A copy of the policies and standards for~~
4 ~~the nonpublic, nonsectarian school or agency and the larger~~
5 ~~program shall be available to the Superintendent.~~

6 ~~(e) Prior to certification, the Superintendent shall conduct an~~
7 ~~onsite review of the facility and program for which the applicant~~
8 ~~seeks certification. The Superintendent may be assisted by~~
9 ~~representatives of the special education local plan area in which~~
10 ~~the applicant is located and a nonpublic, nonsectarian school or~~
11 ~~agency representative who does not have a conflict of interest with~~
12 ~~the applicant. The Superintendent shall conduct an additional onsite~~
13 ~~review of the facility and program within three years of the~~
14 ~~effective date of the certification, unless the Superintendent~~
15 ~~conditionally certifies the school or agency or unless the~~
16 ~~Superintendent receives a formal complaint against the school or~~
17 ~~agency. In the latter two cases, the Superintendent shall conduct~~
18 ~~an onsite review at least annually.~~

19 ~~(f) The Superintendent shall make a determination on an~~
20 ~~application within 120 days of receipt of the application and shall~~
21 ~~certify, conditionally certify, or deny certification to the applicant.~~
22 ~~If the Superintendent fails to take one of these actions within 120~~
23 ~~days, the applicant is automatically granted conditional certification~~
24 ~~for a period terminating on August 31, of the current school year.~~
25 ~~If certification is denied, the Superintendent shall provide reasons~~
26 ~~for the denial. The Superintendent may certify the school or agency~~
27 ~~for a period of not longer than one year.~~

28 ~~(g) Certification becomes effective on the date the nonpublic,~~
29 ~~nonsectarian school or agency meets all the application~~
30 ~~requirements and is approved by the Superintendent. Certification~~
31 ~~may be retroactive if the school or agency met all the requirements~~
32 ~~of this section on the date the retroactive certification is effective.~~
33 ~~Certification expires on December 31 of the terminating year.~~

34 ~~(h) The Superintendent annually shall review the certification~~
35 ~~of each nonpublic, nonsectarian school and agency. For this~~
36 ~~purpose, a certified school or agency annually shall update its~~
37 ~~application between July 1 and October 31, unless the board grants~~
38 ~~a waiver pursuant to Section 56101. The Superintendent may~~
39 ~~conduct an onsite review as part of the annual review.~~

1 ~~(i) (1) The Superintendent shall conduct an investigation of a~~
2 ~~nonpublic, nonsectarian school or agency onsite at any time without~~
3 ~~prior notice if there is substantial reason to believe that there is an~~
4 ~~immediate danger to the health, safety, or welfare of a child. The~~
5 ~~Superintendent shall document the concern and submit it to the~~
6 ~~nonpublic, nonsectarian school or agency at the time of the onsite~~
7 ~~investigation. The Superintendent shall require a written response~~
8 ~~to any noncompliance or deficiency found.~~

9 ~~(2) With respect to a nonpublic, nonsectarian school, the~~
10 ~~Superintendent shall conduct an investigation, which may include~~
11 ~~an unannounced onsite visit, if the Superintendent receives~~
12 ~~evidence of a significant deficiency in the quality of educational~~
13 ~~services provided, a violation of Section 56366.9, or~~
14 ~~noncompliance with the policies expressed by subdivision (b) of~~
15 ~~Section 1501 of the Health and Safety Code by the nonpublic,~~
16 ~~nonsectarian school. The Superintendent shall document the~~
17 ~~complaint and the results of the investigation and shall provide~~
18 ~~copies of the documentation to the complainant, the nonpublic,~~
19 ~~nonsectarian school, and the contracting local educational agency.~~

20 ~~(3) Violations or noncompliance documented pursuant to~~
21 ~~paragraph (1) or (2) shall be reflected in the status of the~~
22 ~~certification of the school, at the discretion of the Superintendent,~~
23 ~~pending an approved plan of correction by the nonpublic,~~
24 ~~nonsectarian school. The department shall retain for a period of~~
25 ~~10 years, all violations pertaining to certification of the nonpublic,~~
26 ~~nonsectarian school or agency.~~

27 ~~(j) The Superintendent shall monitor the facilities, the~~
28 ~~educational environment, and the quality of the educational~~
29 ~~program, including the teaching staff, the credentials authorizing~~
30 ~~service, the standards-based core curriculum being employed, and~~
31 ~~the standard focused instructional materials used, of an existing~~
32 ~~certified nonpublic, nonsectarian school or agency on a three-year~~
33 ~~cycle, as follows:~~

34 ~~(1) The nonpublic, nonsectarian school or agency shall complete~~
35 ~~a self-review in year one.~~

36 ~~(2) The Superintendent shall conduct an onsite review of the~~
37 ~~nonpublic, nonsectarian school or agency in year two.~~

38 ~~(3) The Superintendent shall conduct a followup visit to the~~
39 ~~nonpublic, nonsectarian school or agency in year three.~~

~~(k) (1) Notwithstanding any other provision of law, the Superintendent may not certify a nonpublic, nonsectarian school or agency that proposes to initiate or expand services to pupils currently educated in the immediate prior fiscal year in a juvenile court program, community school pursuant to Section 56150, or other nonspecial education program, including independent study or adult school, or both, unless the nonpublic, nonsectarian school or agency notifies the county superintendent of schools and the special education local plan area in which the proposed new or expanded nonpublic, nonsectarian school or agency is located of its intent to seek certification.~~

~~(2) The notification shall occur no later than the December 1 prior to the new fiscal year in which the proposed or expanding school or agency intends to initiate services. The notice shall include the following:~~

~~(A) The specific date upon which the proposed nonpublic, nonsectarian school or agency is to be established.~~

~~(B) The location of the proposed program or facility.~~

~~(C) The number of pupils proposed for services, the number of pupils currently served in the juvenile court, community school, or other nonspecial education program, the current school services including special education and related services provided for these pupils, and the specific program of special education and related services to be provided under the proposed program.~~

~~(D) The reason for the proposed change in services.~~

~~(E) The number of staff that will provide special education and designated instruction and services and hold a current valid California credential or license in the service rendered or certificate of registration to provide occupational therapy.~~

~~(3) In addition to the requirements in subdivisions (a) to (f), inclusive, the Superintendent shall require and consider the following in determining whether to certify a nonpublic, nonsectarian school or agency as described in this subdivision:~~

~~(A) A complete statement of the information required as part of the notice under paragraph (1).~~

~~(B) Documentation of the steps taken in preparation for the conversion to a nonpublic, nonsectarian school or agency, including information related to changes in the population to be served and the services to be provided pursuant to each pupil's individualized education program.~~

1 ~~(4) Notwithstanding any other provision of law, the certification~~
2 ~~becomes effective no earlier than July 1 if the school or agency~~
3 ~~provided the notification required pursuant to paragraph (1):~~

4 ~~(l) (1) Commencing July 1, 2006, notwithstanding any other~~
5 ~~provision of law, the Superintendent shall not certify or renew the~~
6 ~~certification of a nonpublic, nonsectarian school or agency, unless~~
7 ~~all of the following conditions are met:~~

8 ~~(A) The entity operating the nonpublic, nonsectarian school or~~
9 ~~agency maintains separate financial records for each entity that it~~
10 ~~operates, with each nonpublic, nonsectarian school or agency~~
11 ~~identified separately from any licensed children's institution that~~
12 ~~it operates.~~

13 ~~(B) The entity submits an annual budget that identifies the~~
14 ~~projected costs and revenues for each entity and demonstrates that~~
15 ~~the rates to be charged are reasonable to support the operation of~~
16 ~~the entity.~~

17 ~~(C) The entity submits an entity-wide annual audit that identifies~~
18 ~~its costs and revenues, by entity, in accordance with generally~~
19 ~~accepted accounting and auditing principles. The audit clearly~~
20 ~~shall document the amount of moneys received and expended on~~
21 ~~the education program provided by the nonpublic, nonsectarian~~
22 ~~school.~~

23 ~~(D) The relationship between various entities operated by the~~
24 ~~same entity are documented, defining the responsibilities of the~~
25 ~~entities. The documentation clearly shall identify the services to~~
26 ~~be provided as part of each program, for example, the residential~~
27 ~~or medical program, the mental health program, or the educational~~
28 ~~program. The entity shall not seek funding from a public agency~~
29 ~~for a service, either separately or as part of a package of services,~~
30 ~~if the service is funded by another public agency, either separately~~
31 ~~or as part of a package of services.~~

32 ~~(2) For purposes of this section, "licensed children's institution"~~
33 ~~has the same meaning as it is defined by Section 56155.5.~~

34 ~~(m) The school or agency shall be charged a reasonable fee for~~
35 ~~certification. The Superintendent may adjust the fee annually~~
36 ~~commensurate with the statewide average percentage inflation~~
37 ~~adjustment computed for revenue limits of unified school districts~~
38 ~~with greater than 1,500 units of average daily attendance if the~~
39 ~~percentage increase is reflected in the district revenue limit for~~

inflation purposes. For purposes of this section, the base fee shall be the following:

(1) 1-5 pupils.....	\$ 300
(2) 6-10 pupils.....	500
(3) 11-24 pupils.....	1,000
(4) 25-75 pupils.....	1,500
(5) 76 pupils and over.....	2,000

The school or agency shall pay this fee when it applies for certification and when it updates its application for annual review by the Superintendent. The Superintendent shall use these fees to conduct onsite reviews, which may include field experts. No fee shall be refunded if the application is withdrawn or is denied by the Superintendent.

(n) (1) Notwithstanding any other provision of law, only those nonpublic, nonsectarian schools and agencies that provide special education and designated instruction and services utilizing staff who hold a certificate, permit, or other document equivalent to that which staff in a public school are required to hold in the service rendered are eligible to receive certification. Only those nonpublic, nonsectarian schools or agencies located outside of California that employ staff who hold a current valid credential or license to render special education and related services as required by that state shall be eligible to be certified.

(2) The board shall develop regulations to implement this subdivision.

(o) In addition to meeting the standards adopted by the board, a nonpublic, nonsectarian school or agency shall provide written assurances that it meets all applicable standards relating to fire, health, sanitation, and building safety.

SEC. 2.

SECTION 1. Section 56366.10 of the Education Code is amended to read:

56366.10. In addition to the certification requirements set forth in Sections 56366 and 56366.1, a nonpublic, nonsectarian school that provides special education and related services to an individual with exceptional needs shall certify in writing to the Superintendent that it meets all of the following requirements:

1 (a) It will not accept a pupil with exceptional needs if it cannot
2 provide or ensure the provision of the services outlined in the
3 pupil's individualized education program.

4 (b) Pupils have access to the following educational materials,
5 services, and programs ~~adopted by the board~~ that are consistent
6 with each pupil's individualized education program:

7 (1) ~~State~~ *(A) For kindergarten and grades 1 to 8, inclusive,*
8 *state adopted, standards-based, core curriculum and instructional*
9 *materials.*

10 *(B) For grades 9 to 12, inclusive, standards-based, core*
11 *curriculum and instructional materials used by the local*
12 *educational agency that contracts with the nonpublic, nonsectarian*
13 *school where the pupil attends.*

14 (2) College preparation courses.

15 (3) Extracurricular activities, such as art, sports, music, and
16 academic clubs.

17 (4) Career preparation and vocational training, consistent with
18 transition plans pursuant to state and federal law.

19 (5) Supplemental assistance, including individual academic
20 tutoring, psychological counseling, and career and college
21 counseling.

22 (c) The teachers and staff provide academic instruction and
23 support services to pupils with the goal of integrating pupils into
24 the least restrictive environment pursuant to federal law.

25 (d) The school has and abides by a written policy for pupil
26 discipline which is consistent with state and federal law and
27 regulations.